SUPREME COURT OF THE UNITED STATES

No. 347.

THE UNITED STATES, APPELLANTS,

vs.

GEORGE W. JOHNSON.

APPEAL FROM THE COURT OF CLAIMS.

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1 To the Court of Claims of the United States:

The petition of George W. Johnson, of the Cascades of the Columbia river, in the county of Skamania and Territory of Washington, respectfully represents, that on the fifteenth day of July, A. D. 1850, your petitioner settled upon an unoccupied claim or tract of the public lands belonging to the United States, situate at the said Cascades of the Columbia river, at the head of tide navigation of said river, and upon the north side thereof, in said county and Territory, then in the Territory of Oregon, and became a resident of said Territory.

Your petitioner further represents that he caused the said claim to be thereafterwards surveyed; and that he continued to reside upon and cultivate it, from the time of his said settlement upon it, for four consecutive years thereafter; and that he otherwise conformed to the provisions of the act of Congress approved September 27th, A. D. 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands;" upon which considerations your petitioner avers that on the 15th day of July, A. D. 1854, he became thereby interested in, and the owner in fee of, the said claim, as a donation of three hundred and twenty acres, by virtue of the fourth section of said act of Congress of September 27, A. D. 1850. The said Johnson further represents that his proofs of residence and cultivation were duly made before the register
3 of the land office and the receiver of the public moneys of the Territory of Washington; and those officers, satisfied that, in every respect, he had complied with the requirements of the law as to the conditions of the grant, issued the usual certificate to the Commissioner of the General Land Office for a patent to said Johnson of the said land.

Your petitioner further shows that immediately after his said settlement upon said claim, and at different times subsequent, he greatly improved the value of the same by erecting buildings and wharves upon it, cultivating it, and in other ways; and that he continued to occupy and cultivate the same, doing a successful and constantly increasing business upon it as a farmer, hotel-keeper, and forwarding and commission merchant, until the month of April, A. D. 1856; and that during said month the military authority of the United States took forcible possession of the whole of said tract of land, buildings, and improvements, and expelled your petitioner therefrom, and have ever since held possession of said land, buildings, and improvements, to the exclusion of your petitioner, then and now the lawful owner of said land, to the complete destruction and loss of his said business, and to the great damage of his property.

Your petitioner further says, that relying upon the circumstances above set forth as clearly implying a contract on the part of the government of the United States to re-imburse him for all losses and damages by reason of the seizure, occupation, and detention of his land as above shown, he laid his claim before one John B. Floyd, then Sec-

retary of War of the United States, who directed the military officer in command at the said Cascades to investigate the matter and report to him; that the said officer did cause the claim of your petitioner to be examined, and did, upon partial and interested evidence, report an amount to be due to said Johnson, which was utterly inadequate to re-imburse him for his said damages and losses; that soon afterwards notice of the adverse claims to the said land by parties claiming under alleged conveyances of Johnson, having been filed in the War
4 Department, the said Floyd ordered the general commanding the military department of Oregon to make a new estimate of said damages and losses, and to report the same to him; that the said general commanding did detail for such new examination the same men who made the examination above referred to; and that they, upon evidence of the same nature as that above described, reported the same sum for damages and losses which they had allowed the said Johnson in their former report, viz: the sum of eighteen thousand dollars to extinguish his entire claim, both for land and for damages, or the alternative of eight thousand dollars for damages alone, with one hundred and fifty dollars per month as future rent for said land while held by the United States. Whereupon the said Floyd reported the same sum to Congress, and asked an appropriation of money therefor. Your petitioner further shows that, while the question of such appropriation was pending before Congress, he addressed a communication to that body protesting against the final settlement of his claim against the United States by the payment of any such sum as that reported by the Secretary of War for their consideration. The said Johnson further represents that during the same session, viz: the second session of the Thirty-sixth Congress, the House of Representatives, by resolution, on the eleventh day of February, A. D. 1861, requested the Secretary of the Interior "to direct the surveyor general of Washington Territory to ascertain the amount of damages suffered by George W. Johnson, in consequence of the occupancy of his lands by the War Department, and report the same to this house, with all the testimony on the subject."

The said Johnson further represents that immediately after the passage of the said resolution, he applied to the Honorable Caleb B. Smith, then Secretary of the Interior, for authority to have certain testimony upon the subject taken in the city of Washington, in the District of Columbia; that such authority was granted; that
5 interrogatories on the part of the government were submitted March 21st, A. D. 1861; and that upon such interrogatories, and interrogatories submitted by the claimant, before John S. Hollingshead, a notary public, the depositions of Augustus N. Grenzebach, George B. Simpson, John H. Scranton, J. O. Van Bergen, S. Coffin, C. D. Blanchard, A. M. Gibbons, and F. W. Lander, were taken and submitted to the Secretary of the Interior, who afterwards transmitted the testimony thus taken to the surveyor general of Washington Territory, and directed him in accordance with the above resolution of the House of Representatives. And the surveyor general of said Territory, in compliance with said resolution and in obe-

dience to the directions of the Secretary of the Interior, thereupon did, during the months of August and September next following, proceed to the Cascades aforesaid, and did there examine the said claim; and there and elsewhere, viz: at the Dalles in Oregon, and at Vancouver and Olympia in Washington Territory, did take full and ample testimony upon the subject, and upon the testimony thus taken by him, together with that transmitted him as aforesaid by the Secretary of the Interior, did estimate the damages and losses suffered by your petitioner in consequence of the occupation of his claim as above stated, at one hundred and twenty thousand dollars; and did afterwards, on the ninth day of September, A. D. 1861, submit the said testimony, and his report and estimate thereupon to the Secretary of the Interior, who afterwards, on the sixth day of January, A. D. 1862, submitted the same to Congress. Your petitioner further represents that during the same session the said report and accompanying testimony were submitted by the House of Representatives to the Committee of Claims, who afterwards, upon the twenty-third day of January, A. D. 1863, reported to said house that the case of your petitioner was one of extreme hardship; that at the time his property was seized by the military he was doing a prosperous business, with undoubted prospects for the rapid accumulation of
6 an immense fortune; that by its seizure and occupation by the government his business had been destroyed, and the business of citizens forced into an unnatural channel, and a rival route created; that he was entitled to damages; and that, while the testimony would warrant a larger amount, they would adopt the estimate of the surveyor general in his report, and would recommend the passage of the following bill:

"*A bill for the relief of George W. Johnson.*

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and is hereby, authorized and required to pay unto George W. Johnson, out of any money in the treasury not otherwise appropriated, the sum of one hundred and twenty thousand dollars, in full, for damages sustained by him in consequence of the occupation of his lands by the military authorities of the United States at the lower cascades of the Columbia river."

Your petitioner further represents that, owing to the great amount of business before Congress and to the contemplated reorganization of the Court of Claims, no further action was taken by Congress upon this matter, until the passage of the act approved March 3d, A. D. 1863, entitled "An act to amend 'an act to establish a court for the investigation of claims against the United States,' approved February twenty-fourth, eighteen hundred and fifty-five," by the passage of which act of Congress jurisdiction in this matter was transferred to your honorable court.

Your petitioner further declares that the War Department had

previously to the twenty-ninth day of January, A. D. 1862, informed your petitioner that the government did not desire to purchase the title to his said land, but only to lease it for a number of years. He, therefore, upon the said 29th day of January, applied to the Secretary of the Interior for the usual patent for his said claim, as a donation of three hundred and twenty acres, under the said act of Congress, approved September 27th, A. D. 1850, but was re-
7 fused a patent on the ground that the whole matter was then pending in Congress, and that he must await the decision of that body; but your petitioner avers that the question of title to the said land was never referred to, nor considered by, Congress; that the rightful ownership of the land was always conceded to be in your petitioner, and that the said sum of one hundred and twenty thousand dollars was recommended by the surveyor general of Washington Territory, and by the Committee of Claims of the said House of Representatives, as the measure of past damages to the claimant's business and property, by reason of such seizure and detention, up to the date of said recommendation, and not as the price of the land, nor in liquidation of prospective damages, nor both; and that such sum would be totally inadequate to compensate him for the loss of the title to his said land, and for the destruction of his past and future business upon it.

The said George W. Johnson further represents that he is a citizen of the United States, and the original owner of said claim; that he has, at all times, borne true allegiance to the government of the United States; and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government.

Whereupon, your petitioner brings this petition before your honorable court, and humbly prays that he may be awarded for all losses and damages by reason of the seizure of his said land, and the consequent destruction of his property and business by the military authority of the United States, the full sum of two millions of dollars; and that judgment of this court may be entered therefor. And, as in duty bound, will ever pray.

GEORGE W. JOHNSON.
By SOMES, BROWN & CO.,
His Attorneys.

I hereby declare, on oath, that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been
7½ made, except as in said petition stated, that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that I believe the facts as stated in said petition are true.

LYSANDER HILL,
Attorney for George W. Johnson.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Sworn to and subscribed before me this third day July, 1863.
[SEAL.] EDW. F. BROWN,
Commissioner of the Court of Claims.

[5 cent revenue stamp attached.]

P. O. address of claimant:
Cascades, Skamania county,
Washington Territory.

P. O. address of his counsel:
No. 476 *Seventh street, north,*
Washington, D. C.

8 In the Court of Claims of the United States.

Amended petition.

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vs.
THE UNITED STATES.

To the honorable judges of the said court:

George W. Johnson asks leave to amend his original petition; and thereupon he says that his donation claim to the land described in said original petition, under the act of Congress therein mentioned, is complete and perfect, and has been so pronounced by the Commissioner of the General Land Office, to whom the certificate of the register and receiver of the local land office of the Territory of Washington was submitted, as required by said law.

Your petitioner further alleges that the said commissioner prepared a patent for said land in the petitioner's name, and presented the same to the Secretary of the Interior, about the —— day of January, 1862; but the said Secretary declined to execute the said patent, not because of any defect in the petitioner's right, but solely because the military authorities were in possession of said land, and the question of compensation was then pending in Congress. The petitioner now submits to the court that the act of Congress aforesaid imports an absolute grant and conveys to him the absolute title in fee, he having complied with all the conditions prescribed by said law. But if he is mistaken in this view, the petitioner insists that he is entitled to the patent, and he asks the intervention of the court, if it have the power and jurisdiction, to
9 decree the title to him, or to report a bill to Congress for that purpose, or to grant such other relief in the premises as may be suitable to the case.

And in further amendment to his said original petition, the petitioner says he claims compensation, under the Constitution of the United States, for the taking of his property for public use. He insists that he ought to be allowed not merely the annual value of the

land from the time it was taken until it shall be surrendered, or until this court shall pronounce its judgment, but also such part of the intrinsic value of the land as has been destroyed by the possession and other action of the government.

Your petitioner alleges that the said land is at the head of navigation of the Columbia river, below the falls; that there is a valuable steamboat landing thereon; and that the same is most eligibly situated for commanding the business of transportation over the portage around the falls, and for the location of a prosperous town. At the time of the seizure of said property, your petitioner had numerous applications for renting and purchasing portions of said property. He has also since had such applications, and also a most important proposition for building a railroad from said land around the falls of the Columbia, with an offer, on advantageous terms, of one-half the property in said railroad. But your petitioner was unable to accept any of said offers, and in consequence of the military possession of the land, the railroad, since constructed, has been extended, at great expense, to a point lower down the river, it being carried on a bridge through the water to an island. The military authorities have permitted this railroad to run over petitioner's land; and although the natural and best terminus is at the landing aforesaid on the petitioner's claim, the railroad company have been forced to go below and make an artificial landing, to the great injury of your petitioner's property and diminution of its value.

Your petitioner further states that the military authorities, from time to time, permitted various persons to build upon and occupy parts of the said land for purposes of private business, against the protest of the said petitioner.

All of which acts and doings tended greatly to the injury of your petitioner and to the destruction of the intrinsic value of his property, by preventing the making of improvements and the transaction of commercial and other business, and by building up rival points in the immediate vicinity. Your petitioner insists that the losses and damages arising out of these causes constitute a part of the value of the property taken for public use, and ought to be added to the annual rent and included in the "compensation" which is provided for in the Constitution, the supreme law of the land. Wherefore your petitioner prays that these rents and profits, losses and damages, sufficient to make a just compensation under all the circumstances of the case, may be fairly estimated and decreed accordingly.

SOMES, BROWN & CO.
WALKER & STANTON,
For the Claimant.

DISTRICT OF COLUMBIA,
City of Washington:

George W. Johnson makes oath that the facts stated in the foregoing petition are true to the best of his knowledge and belief, and that he is the sole owner of the said claim and of the land mentioned in the petition. He also declares that he has at all times borne true

allegiance to the government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government.

GEO. W. JOHNSON.

Sworn to before me this 25th day of January, 1864.

SAM'L H. HUNTINGDON,
Chief Clerk Court of Claims.

[U. S. revenue stamp.]

In the United States Court of Claims.—October term, A. D. 1863.

THE UNITED STATES
ats.
GEORGE W. JOHNSON. } No.

And the said defendants, by Charles Gibson, their solicitor, come and make answer to the petition of the claimant on file herein; and not confessing the same, or any part thereof, doth hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of two millions of dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

CHARLES GIBSON,
Solicitor for the United States.

In the Court of Claims.

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THE UNITED STATES.

And now, to wit, 25th of March, 1867, the court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge, and decree that the said George W. Johnson have and recover of and from [of and from] the United States the sum of forty-five thousand and five hundred dollars ($45,500 00.)

By the Court :

13 Court of Claims, 1,906.

GEORGE W. JOHNSON
vs.
THE UNITED STATES.

The United States, by E. P. Norton, its solicitor, hereby makes application to the honorable Court of Claims for an appeal of the case of George W. Johnson *vs.* The United States to the Supreme Court of the United States.

E. P. NORTON,
Solicitor for the United States.

Filed in the clerk's office, June 10th, 1867.

14 At a Court of Claims held in the Capitol, in the city of Washington, on Tuesday, the 25th day of June, A. D. 1867.

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THE UNITED STATES.

Mr. Norton, the solicitor, presented to the court his application for an appeal, filed in the clerk's office on the 10th of instant June, from the judgment entered in this case on the 25th of March last, to the Supreme Court of the United States, whereupon the claimant, by M. Cushing, his counsel, filed his objections to the allowance of the same, and the case was argued and submitted on the said application and objections by Mr. Norton, the solicitor for the United States, and by Mr. Cushing, for the claimant.

15 At a Court of Claims held at the Capitol, in the city of Washington, on Wednesday, the 26th day of June, A. D. 1867.

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The Chief Justice announced that a majority of the court had decided to allow the petition for an appeal, submitted in this case by the solicitor for the United States, on grounds which would be stated in an opinion, hereafter to be filed in this case, as also in other cases to the allowance of an appeal in which objections had been interposed; whereupon it was ordered that the said petition for appeal be allowed.

16 The transcript of the record having been sent to the Supreme Court, the said court thereafterward, to wit, on the 20th January, A. D. 1868, ordered that the transcript of the record in this case be and the same is hereby remanded to the Court of Claims with directions to return a finding of the facts in accordance with the rule of the Supreme Court.

Whereupon, the finding of the facts having been duly considered by the Court of Claims, it is ordered that the following amended finding of fact and conclusions of law be made, and entered as a part of the record in this case, as the finding of the facts and conclusions of law therein, and the same be transmitted to the Supreme Court.

17 *Amended findings of the facts and the conclusions of law.*

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THE UNITED STATES.

This case having been remanded from the Supreme Court in order that the Court of Claims may make a new finding of facts on the appeal herein, accordingly the court finds the following facts to be proved and established:

First. The petitioner, Geo. W. Johnson, on the fifteenth day

July, A. D. 1850, settled upon an unoccupied claim or tract of the public lands belonging to the United States, situate at the said Cascades of the Columbia river, at the head of the tide navigation of said river, and upon the north side thereof, in the said county and Territory, then in the Territory of Oregon, and became a resident of said Territory, he then being a white settler, about the age of eighteen years, and a citizen of the United States.

The petitioner further causes the said claim to be thereafter surveyed, and he continued to reside upon and cultivate it from the time of his said settlement upon it for four consecutive years thereafter, and otherwise conformed to the provisions of the act of Congress approved September 27th, 1850, entitled an "Act to creat the office of surveyor general of the public lands in Oregon, and to
18 provide for the survey and to make donations to the settlers of the said public lands."

On the 29th day of October, 1853, the petitioner filed with surveyor general of Oregon the notice in writing required by the 6th section of the act to amend an act entitled an act to create the office of surveyor general of the public lands in Oregon, approved 14th February, 1853.

And on the first day of September, 1859, the petitioner also filed proof with the register and receiver of the Territories of Oregon and Washington, and proved to their satisfaction the fact that his settlement on the said tract was commenced on the 15th day of July, 1850. And he at the same time established, by two disinterested witnesses, the fact of continued residence upon and cultivation of the said tract, as required by the said act of Sept. 27th 1850, and the acts amendatory thereof. And the said register and receiver, on the 20th day of August, 1861, duly certified to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent might be issued to the petitioner for the tract aforesaid.

Second. The petitioner duly demanded from the proper officers of the defendants a patent securing to him the said tract; but the defendants, by their officers, the Commissioner of the General Land Office and the Secretary of the Interior, have neglected and
19 refused to grant to the petitioner the patent so demanded, for the reason that the said tract was at the time thereof in the military occupation of the defendants.

Third. In 1856 the Indians destroyed the hotel and other buildings of the petitioner, but did not destroy his enclosures, orchards, or wharf-boat, In April, 1856, General G. Wright, commanding the United States troops in Oregon, and operating against hostile Indians in the Territory, with the consent of the claimant petitioner, entered upon and took possession of the tract, and established a garrison and erected block-houses. The defendants have never instituted any proceedings to declare the tract a permanent military reservation, nor have they ever taken means to procure the title thereof, but have continued to hold the premises by military occupation, to wit,

from the last day of April, 1856, to the last day of April, 1863, being a period of seven years.

Fourth. At the time of the said entry of the defendants, in April, 1856, the value of the rent of the said premises for the seven years next ensuing was the sum of ($6,500) six thousand five hundred dollars per annum, and the damages which the claimant has suffered by the entry and occupation of the defendants, as aforesaid, up to and including the last day of April, A. D. 1863, is the sum of
20 ($45,500) forty-five thousand five hundred dollars.

Fifth. The petitioner erected buildings and made other improvements on the said premises, and the profits of his business during the year preceding the entry thereupon by the defendants amounted to the sum of ($8,000) eight thousand dollars, of which ($5,000) five thousand dollars was derived from the business of transportation around the portage of the cascades, and ($3,000) three thousand dollars from a hotel erected by him on the premises.

By reason of the said entry upon and occupation of the said premises by the defendants, the petitioner was deprived of, and wholly lost the use of his hotel, and also his share and interest in the said business of transportation around the Cascades, which said busisess of transportation has been continued since by the other parties interested, and the profits thereof to which the petitioner would have been entitled if he had remained a partner therein from the said last day of April, 1856, to the last day of April, 1863, amount to the sum of ($200,000) two hundred thousand dollars.

Sixth. On the 11th of February, 1861, the House of Representatives passed a resolution requesting the Secretary of the Interior to direct the surveyor general of Washington Territory to ascertain the amount of damages suffered by the petitioner in conse-
21 quence of the occupancy of the said premises by the defendants. Thereupon, such proceedings were taken by the Secretary of the Interior that, on the 9th day of September, 1861, the surveyor general estimated the amount of damages sustained by the petitioner, by reason of the occupation of his said premises as aforesaid, at the sum of ($120,000) one hundred and twenty thousand dollars.

Seventh. The premises measure upon the Columbia river 61 chains and 15 links, and three-eights of the tract is a level plateau of little value for agricultural purposes. The remaining five-eighths of the tract is mountain land of no value. The level plateau is well adapted for a town site and is the largest and most eligible town site on either side of the Columbia, either above or below the Cascades. It also embraces the only route for a railway or public road on the north side of the Columbia.

22 And upon the findings of fact aforesaid the court render and determine the following conclusions of law:

First. On the facts and circumstances set forth in the first finding of facts, the petitioner became and is the equitable owner of the premises described, and is entitled to receive from the defendants a patent granting the same, as provided by the "Act to create the

office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved 27th September, 1850, and the acts amendatory thereof.

Second. The facts and circumstances set forth in the second and third findings of fact, did not constitute any sufficient reason in law to justify the defendants in not issuing the patent to which the petitioner was entitled, as set forth in the first conclusion of law; and the military occupation referred to in the third finding of facts did not constitute a military reservation by the President, within the meaning of the "Oregon Donation Act," approved 27th September, 1850, and the acts amendatory thereof.

Third. The defendants are liable to the petitioner for the use and occupation of the premises described from the time of their
23 entry thereon to the time of the commencement of their action.

The damages which the petitioner is entitled to recover, for such use and occupation, are the annual rent or value for which the premises might have been leased on the last April, 1856, for a period of seven years, for the uses and purposes to which the defendants have put them.

The petitioner is entitled to recover, for such use and occupation, the sum of ($6,500) six thousand five hundred dollars per annum, amounting in the aggregate to the sum of ($45,500) forty-five thousand five hundred dollars, as set forth in the fourth finding of facts.

Fourth. The petitioner is not entitled to recover, as damages, the prospective profits of his business set forth in the fifth finding of facts.

Fifth. The petitioner is not entitled to recover, as damages, the sum of ($120,000) one hundred and twenty thousand dollars, found by the surveyor general of Washington Territory, as set forth in the sixth finding of facts.

Sixth. The facts set forth in the seventh finding of facts do not constitute a defence to the action, as claimed by the defendants upon the trial.

24 I, John Randolph, ass't clerk of the Court of Claims, do hereby certify that the foregoing is a true copy of the findings of fact, as amended, and the conclusions of law drawn therefrom by the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 15th day of February, A. D. 1868.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk of Court of Claims.

25 In the Court of Claims.

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THE UNITED STATES. } No. 1,906.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and of the final judgment of the court thereon; of the application of the solicitor of the United States for the allowance of an appeal, as filed in the clerk's office, on the 10th day of June, 1867, and of the order of the court allowing the same; of the amended finding of the facts and conclusions of law by said Court of Claims, in compliance with the order of the Supreme Court, dated 20th January, 1868, remanding this transcript of record to the Court of Claims, with directions to return a finding of the facts, in accordance with the rule of said Supreme Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 4th day of March, A. D. 1868.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.